

Report on Public Policy Position**Name of section:**

Appellate Practice Section

Contact person:

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This proposal would insert a “good cause” provision into MCR 6.433 to require a defendant in postconviction proceedings to show good cause to obtain a second set of court documents. This amendment would mirror the good-cause provision in MCR 6.433(B)(2) for appeals by leave.

Date position was adopted:

December 18, 2009

Process used to take the ideological position:

Position adopted after discussion and vote at a schedule meeting

Number of members in the decision-making body:

24

Number who voted in favor and opposed to the position:

16 Voted for position

0 Voted against position

0 Abstained from vote

8 Did not vote

Position:

Support

Explanation of the position, including any recommended amendments:

The State Bar of Michigan Appellate Practice Council supports adoption of the proposed amendment to MCR 6.433(C), which would provide that an indigent criminal defendant who cannot file either an appeal of right or appeal by leave can obtain from the trial court, upon a showing of good cause, a second copy of the trial court transcripts, at no cost, for further post-conviction proceedings.

Adoption of this amendment to the court rule would promote fairness within the rules, as MCR 6.433(B) provides that an indigent defendant can obtain a second copy of the transcripts, upon a showing of good cause, in order to file an appeal by leave. The ability of an indigent defendant to access the courts to file an appropriate post-

conviction action requires that the defendant have access to the transcripts of the trial court proceedings, and should not depend upon the nature of the post-conviction proceeding to be filed. As this Court has recognized that where the good cause standard is met, an indigent defendant is entitled to a second set of the transcripts to file an appeal by leave, a similar recognition of the right of a defendant to a second set in order to file pleadings such as a motion for relief from judgment in the trial court, pursuant to MCR 6.500 et. seq., or a petition for a writ of habeas corpus in Federal District Court, would promote fair and equal access to the courts.

The good cause standard requires that the indigent defendant demonstrate that the need for a second set of the transcripts arises from circumstances excusing the defendant's lack of access to the initial set that was provided to the defendant during an earlier appeal of right. Such circumstances commonly arise in situations where either the initial set of transcripts were destroyed, damaged, or lost within the Department of Corrections, through no culpable fault of the defendant-inmate, or where assigned appellate counsel for the defendant failed, refused, or was unable to provide the defendant with that initial set of transcripts following the appeal of right or by leave. Adoption of this standard limits the entitlement of indigent defendants to a second set of transcripts to a relatively small percentage of indigent defendant appeals, and minimizes the fiscal impact on the counties and trial courts responsible for providing the transcripts at taxpayer expense. In those jurisdictions that require assigned appellate counsel to return the initial set of transcripts to the county as a condition of payment on a voucher for attorney fees, the impact of this proposed amendment to MCR 6.433(C) should be minimal, as the county will have the initial set to transmit to the indigent defendant upon request.

The small additional expense to the counties and trial courts to provide a second set of transcripts to an indigent defendant, in order for the defendant to be able to file a post-conviction action other than an appeal by leave, should not outweigh the practical impact of barring such defendants from access to the courts where good cause explains the defendant's inability to use the initially provided set.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in <http://courts.michigan.gov/supremecourt/Resources/Administrative/2009-04-DQ-Order.pdf>